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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 26th December 2014

No. 10528—I D-57/2010-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 18th November 2014 in Industrial Dispute Case No. 03/2010 of the Presiding Officer, Labour Court, Jeypore, Dist. Koraput to whom the industrial dispute between the Management of Managing Director, TDCCOL, Bhubaneswar (2) Branch Manager, TDCCOL, Rayagada Branch, Rayagada & their Workman Shri Sibaram Mishra was referred to for adjudication is hereby published as in the Schedule below :—

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT

JEYPORE, KORAPUT

INDUSTRIAL DISPUTE CASE No. 3/2010

Dated the 18th November 2014

Present :

Shri Debasis Rout, O.S.J.S.(Jr. Branch),
Presiding Officer, Labour Court,
Jeypore, Dist. Koraput.

Between :

The Managing Director, TDCCOL, . . . First Party—Management No.I
Bhubaneswar. At/PO Bhubaneswar,
Dist. Khurda.

The Branch Manager,
TDCCOL, Rayagada Branch,
At/PO/Dist. Rayagada. First Party—Management No.II

Vrs.

Its Workman Shri Sibaram
Mishra, Indira Nagar 5th Lane
At/P.O. Rayagada,
Dist. Rayagada.

. . Second Party—Workman

Under Sections—10 & 12 of the Industrial Disputes Act, 1947

Appearances :

Shri Ashok Kumar Patra, . . For the Managements
Branch Manager, TDCCOL, Rayagada.

Self . . For the Workman

Date of Argument . . 25-10-2014

Date of Award . . 18-11-2014

AWARD

The matter arises out of a reference made by the State Government in the Labour & Employment Department, Odisha, Bhubaneswar under Section 12(5), read with Section 10 (1) of the Industrial Disputes Act, 1947 vide Memo. No. 3860(6) dated the 12th May 2010 for adjudication of the following dispute:—

SCHEDULE

"Whether the termination of services of Shri Sibaram Mishra, ex shop Assistant, TDCCOL, Rayagada Branch, Dist Rayagada by the Managing Director, TDCCOL, Bhubaneswar in the guise of compulsory retirement from the service with effect from the 30th September 2003 is legal and / or justified, If not to what relief Shri Mishra is entitled ?"

2. The case of the second party workman as would appear from the statement of claim filed by him is that, he was appointed as Shop Assistant under the TDCCOL, R. Udayagiri Branch and during his service period he continuing his service to the best satisfaction to the superiors in different branches of the Corporation. Before he superannuation, the second party workman was given compulsory retirement from his service with effect from the 30th September 2003 vide order No.4561, dated the 29th September 2003 issued by the M. D. TDCCOL, Bhubaneswar with an allegation that lack of integrity as the 2nd party misappropriated Corporation funds of the Rs. 4,87,155. The M. D., TDCCOL, Bhubaneswar, reviewed the cases C.R.S. of employees including the second party and made him liable to pay of Rs. 4,06,995.74ps. During the service of the second party for the period from 1976 to 1988, a Departmental Proceeding vide D. P. No.7992, dated the 19th September 1989 was initiated for misappropriation of funds amounting to Rs.50,493.20ps. and the said Departmental Enquiry was concluded on the 19th September 2005. Another departmental proceeding vide D. P. No.1221, dated the 20th February 1995 was initiated against the second party which was concluded on the 23rd September 2005, but the compulsory retirement of service of the second party was made on the 30th September 2003 which is also not justified. The second party workman further pleaded that, a Departmental Proceeding vide D. P. No.1864, dated the 6th April 1996 was initiated against him and said proceeding was conducted on the 2nd July 2004 where the disciplinary authority ordered that, the workman is liable to pay Rs. 45,216 and the said order was challenged before the disciplinary authority which was rejected. In the year 1997 the second party was charge sheeted vide D. P. No.5409, dated the 24th October 1997 which was

disposed of on the 19th January 2009 without any evidence. In the year 1998 another departmental proceeding vide D. P. No.4374, dated the 6th October 1998 was initiated against him which was disposed of on the 21st September 2005 without any evidence. The second party workman further pleaded that, as per the office Order, dated the 15th October 2003 and 20th October 2003 the President of TDCCOL, Bhubaneswar has ordered for the reinstatement of all the CRS employers including the second party, but same was dishonoured by the first party. At the time of enquiry in all the cases, the first party neither provide any documents nor any list of witnesses to the second party for defend the allegation made against him. The first party terminated the service of the second party workman without any legal proceeding, without any finalisation of enquiry and without any proper Audit Report., etc. While terminating the second party by means of compulsory retirement of the service the first party management did not comply with the mandatory provisions of the I. D. Act. Therefore the second party workman praying to direct to the first party to take back him service for the period from the 20th September 2003 to the 30th June 2006 with the payment of full back wages along with other all service benefits.

3. The case of the first party management as per the W.S. filed by them is that, during the service period of the workman in the management he has committed misappropriated funds of the Corporation and the first party management has given CRS to the second party workman along with 21 employees as per law by observing due formalities as per Rule 38 of the TDCCOL Service Rule 1990. The management has rightly taken decision regarding CRS of the workman. During his incumbency as a Shop Assistant, the second party committed misappropriation of funds of the first party for which a disciplinary proceeding was initiated against him. During the service from 1986-87 to 1990-91, a Disciplinary Proceeding vide No.1221, dated the 20th February 1995 was also initiated against the second party. The Managing Director, gone through the records and finally arrived at the outstanding liability against the second party and accordingly an amount of Rs.19,836.45ps. has been recovered from the second party workman in D. P. No.1864, dated the 6th April 1996. Another Disciplinary Proceeding vide No.5409, dated the 24th October 1997 was initiated against the second party workman. Another Disciplinary Proceeding No.4374, dated the 6th October 1998 was also initiated against the second party for misappropriation of funds of the first party management. After receipt of the enquiry report from the enquiry officer and comments of the second party workman on the said enquiry report the disciplinary authority after carefully and detail examination of the entire records finalised the said disciplinary proceeding and the final order was communicated to the second party workman. The appointing authority has taken decision of compulsory retirement of the workman as per provision of TDCC Rules. In all the disciplinary proceedings drawn up against the second party, he was specifically permitted to inspect/verify the relevant records. Since the second party was already directed the charge sheet itself to inspect the records and to take extract of the same and to even cite the name of the witness to be examined by him, there was no necessity of further supply of records to the workman in the enquiry. The second party workman was given enough opportunity in the interest of natural justice to call for any records to cross-examine marshalling officer to call for witness at his own choice to be examined for his defence but the second party failed to avail any such opportunity and to defend himself accordingly. The workman has been retired on CRS with effect from the 30th September 2003. There is no necessity for finalization of disciplinary proceedings at the time of giving CRS to the workman. As per provision three(3) month's salary in lieu of three month's notice amounting of Rs.12,318 has been paid to the workman. So there is no necessity to follow the provision of Section 25-F of the I. D. Act. All the terminal benefits as well as arrear dues has been paid to the workman and he received the same without any protest. Therefore, reference may be dismissed.

On the aforesaid pleadings of both the parties the following issues were framed for determination :—

ISSUES

(i) "Whether the termination of Service of Shri Sibaram Mishra, ex Shop Assistant, TDCCOL, Rayagada Branch, Dist Rayagada by the Managing Director, TDCCOL, Bhubaneswar in the guise of compulsory retirement from the service with effect from the 30th September 2003 is legal and / or justified?

(ii) If not, to what relief Shri Mishra is entitled ?"

5. In order to prove its case, the second party workman examined himself as W.W. No.1 and has relied on 16 documents marked as Exts. 1 to 16. On the other hand, the first party management examined one witness as M.W. No. 1 and has exhibited only 8 documents marked as Exts.A to H in support of its case.

FINDINGS

6. *Issue No.(i) & (ii)*—Both the issues are taken up together for the sake of convenience. During course of hearing the workman examined himself as W.W.No.1. He has stated in his evidence that, he was joined as Shop Assistant under the TDCCOL, R. Udayagiri Branch vide Memo. No.718 (28)/74 TDCS, dated the 1st March 1974 vide Ext.1. He was given compulsory retirement with effect from the 30th September 2003 vide Order No.4561, dated the 29th September 2003. He also produced Order No.4561 dated the 29th September 2003(Ext. 2). He further stated that, the departmental proceeding was initiated for the charge of shortage of funds of Rs.50,493.20ps vide D. P. No.7992, dated the 19th September 1989 which was concluded on the 10th September 2009. He also produced the copy of the D. P. No.7992 dated the 19th September 1989 and conclusion of the said proceeding, dated the 10th September 2009. marked as Exts. 4 & 5 respectively. He further stated that, another Departmental Proceeding vide No1221, dated the 20th February 1995 was initiated against him which was concluded on the 10th September 2009. He also produced the D. P. No.1221, dated the 20th February 1995 (Ext. 6) and final order of the above D. P. (Ext. 7).It is also the evidence of W.W. No.1 that, during his service at Udala Branch for the period from 1991-92, a D. P. No.1864 dated the 6th April 1996 was initiated against him and disciplinary authority ordered that he is liable to pay Rs.45,216 and concluded vide Order No.4778, dated the 29th December 2004. He also produced the Departmental Proceeding No.1864, dated the 6th April 1996 (Ext. 8) and Order No.4778, dated the 29th December 2004 of disciplinary authority (Ext. 9). It would reveal from proceeding No.5409 dated the 24th October 1997 vide Ext. 10 that, the second party workman was charge sheeted for Administrative lapses which was disposed of on 19th January 2009 vide Ext. 11. He further stated that, he had been charge sheeted vide D. P. No.4374, dated the 6th October 1998 for misappropriation of Corporation funds which was disposed of on the 27th July 2009. He also produced the copy of D. P. No.4374, dated the 6th October 1998 (Ext.12) and final order of the said D. P. (Ext. 13). He further stated that, before finalisation of the D. P. the compulsory retirement order was passed by the Management which is not justified. He further stated that, the president of TDCCOL ordered for the reinstatement of all the CRS employees but the same was dishonoured by the Management and one Shri Arunodoya Mohanty has been reinstated by the Management vide Order No.203/TDCCOL/BBSR, dated the 25th January 2006 vide Ext. 15. The evidence of the W. W. No.1 further discloses that, without following the procedure of Standing Order and without giving any opportunity in Departmental Enquiry and without handing over the Audit Report the management terminated him by means of compulsory retirement from

service which is illegal and unjustified. He also produced the copy of the judgement in Service Dispute-3 of 2011 marked as Ext. 16.

7. The M.W. No.1 being the Branch Manager, T.D.C.C., Rayagada Branch in his evidence has stated that, the workman was compulsorily on the 30th September 2003 basing on the principles of Rule 38 of T.D.C.C. Service Rule, 1990 vide Ext. A. He further stated that the Managing Committee after due scrutiny, recommended compulsory retirement of the workman and other 21 employees on the approval and guidelines of Managing Committee dated the 6th November 1992. The first party also produced copy of the decision of the Managing Committee dated the 6th November 1992 marked as Ext. B. and copy of statement of misappropriation amount by the workers vide Ext. C. He further stated that, as per the provisions 3 months salary in lieu of three months notice on amounting to Rs.12,318 was given to workman to receive the same without any objection and the compulsory retirement given to the workman was under the proper law and provisions of existing Acts and Rules. The first party also produced the copy of Office Order-4561, dated the 29th September 2003 (Ext. D), copy of final order of the disciplinary authority in D. P. No.4374, dated the 6th October 1998 (Ext. E), copy of the Final Order in D. P. No.1221, dated the 20th February 1995 (Ext. F), copy of the Memo No.4779, dated 29th December 2004 (Ext. G) and copy of L. No.617 dated the 22nd December 2009 (Ext. 8). In his cross examination he has admitted that, the departmental proceedings were not finalised when the workman was given compulsory retirement from service.

8. Having heard both the sides, perused the case records it appears that, the second party workman was given compulsory retirement from his service with effect from the 30th September 2003 by the first party management with an allegation that lack of integrity as he has misappropriated of Corporation funds of Rs.4,87,155 (Rupees four lakhs eight seven thousand and one hundred fifty five) only. The first party contended that, the workman was given compulsory retirement from service as per Rule 38 of T.D.C.C. Service Rule 1990 basing on the approval and guidelines of Managing Committee. On the other hand the second party workman challenged his compulsory retirement from service as without any legal proceeding, without any finalisation of enquiry, without any audit report and without giving any opportunity to him in Department Enquiry, the management terminated him from service. Therefore the question arises for consideration is as to whether the appointing authority has taken a decision of compulsory retirement as per the provisions of the Rules?

9. Be that as it may, the second party workman was appointed as Shop Assistant under the T.D.C.C.O.L., R. Udayagiri Branch. During his service period the workman has committed misappropriated funds of the Corporation, the first party management terminated the service of the workman by way of compulsory retirement with effect from the 30th September 2003 as per Order No.4561, dated the 29th September 2003 issued by the M. D. T.D.C.C.O.L., Bhubaneswar. During his service period 5 Nos. of the Departmental Proceedings vide D. P. No.7992, dated the 19th September 1989, D. P. No.1221, dated the 20th February 1995, D. P. No.1864, dated the 6th April 1996, D. P. No.5409, dated the 24th October 1997 and D. P. No. 4374, dated the 6th October 1998 were initiated against the workman and before finalisation of the said D. Ps., the workman was compulsorily retired from service basing on the Rule 38 of TDCC Service Rule. As already stated the workman challenged the order of the compulsory retirement vide Order No.4561, dated the 29th September 2003 by the M. D. T.D.C.C.O.L., Bhubaneswar. Therefore it is necessary to refer the provisions of Rule 38 of T.D.C.C. Service Rule. As per Rule 38 the Appointing Authority may

retire an employee/workman on grounds of physical infirmity, behavioural depravity, lack of integrity, obvious inability or inefficiency or being a security risk etc, to be recorded in writing but without giving him any reason after he has completed 20 years of service with on Corporation or on attaining 50 years of age, whichever is earlier. The said Rule further discloses that, the compulsory retirement may be regulated by the Corporation in general or special orders for smooth management of the work of the Corporation. It is clear that, the appointing authority may retire workman as per the said Rule. As per the service Rule the Appointing Authority means the Managing Committee which is constituted under the provisions of the O.C.S. Act and Rules and its Bye-laws. All the powers expressed in thus Rules are vested in the Managing Committee of the Corporation. As per Bye-laws the entire administration of the Corporation shall vest in the Managing Committee and the Managing Committee is the sole authority to appoint, suspend, remove or dismiss or otherwise deal with the employees of the Corporation in accordance with the subsidiary rules to be framed and approved by the Managing Committee. Thus the Managing Committee having power to retire workman as per Rule of the Corporation.

10. In the present case the M. D. T.D.C.C.O.L., Bhubaneswar has given compulsory retirement to the workman from the service with effect from the 30th September 2003 as per Rule 38 of the T.D.C.C. Service Rules. As per Order No.4561, dated the 29th September 2003 vide Exts. 2 showing that, the Managing Director of the Corporation issued this Order. As already stated the workman challenged the said order mainly on the ground that, without any approval of the Managing Committee, all of a sudden, the Managing Director, passed the compulsory retirement order without following the rules and regulation of the Corporation. It is to be further noticed that, the second party workman was given compulsory retirement with an allegation that, lack of integrity as the second party misappropriated the Corporation funds. Before passing of this order 5(Five) Disciplinary Proceedings which was initiated against the workman has not been finalised by that time. According to first party management, the committee examined the several case records like Disciplinary Proceedings Audit report and Accounts finalization statement of the employees and recommended name of the second party along with 21 other employees for compulsory retirement on the ground of lack of integrity. A decision of the Managing Committee regarding authorisation to the Managing Director, T.D.C.C. to function both appointing authority and disciplinary authority held on the 6th November 1992 and accordingly as per provision of 38 of T.D.C.C. Service Rule, the Managing Director has taken the decision for compulsory retirement of the second party. As per Rule 38 of T.D.C.C. Service Rule the appointing authority (Managing Committee) may retire an employee/workman. In the case at hand the second party was given compulsory retirement due to lack of integrity by the Managing Director of the Corporation being authorisation by the Managing Committee as per Rule 18(Z) (C2) of Bye-laws of the Corporation on dated the 6th November 1992, basing on which the Managing Director passed Order of compulsory retirement on the 29th September 2003 before conclusion of the disciplinary proceeding drawn up against the workman. It would reveal from the Office Order No.4561, dated the 29th September 2003 regarding compulsory retirement of the second party workman vide Exts. 2 that, the Managing Director passed the aforesaid Office Order without mentioning the actual cause of punishment. Rather passed the Order against the workman. On the other hand, the rules and provisions of the Corporation does not provide for passing the order of compulsory retirement of the employees/workman before finalisation of disciplinary proceeding drawn up against the workman. Moreover, there is no material placed by the first party to show that, the workman was given compulsory retirement by the first party before the finalisation of the disciplinary proceeding as per the Rules of the corporation.

11. As has been stated earlier that, during the service period of the workman 5 Nos. of Departmental Proceedings were initiated against the workman and accordingly the charges were framed on different heads and basing on the enquiry report, the disciplinary authority passed final Order after passing of compulsory retirement Order by the first party management. As already stated the workman was given compulsory retirement due to lack of integrity as he has misappropriated Corporation funds to the tune of Rs.4,87,155. It may be noted that, the charges framed against the workman has not been proved at the time of passing the order of compulsory retirement. In the present case the management should have proved the charges of misappropriation of Corporation funds by the workman during his service period before terminating him from service. The first party could remove the workman from service in accordance with the provisions of the Service Rules. On the other hand the onus lies on the first party management to prove the charges framed against the workman for misappropriation of Corporation funds. During course of hearing, the Management has not submitted the Audit report and other relevant documents if any to prove that, the workman has misappropriated the Corporation funds so also except M.W. No.1 no other witness examined by the first party management in support of their case. Rather the management relied on documents marked as Exts. A to Exts. H in support of its case. Therefore it can be said that the charges framed by the management against the workman could not be established by adducing cogent and reliable evidence. It is first and foremost duty of the management to hold a fair and just domestic enquiry before passing the order of termination of the workman and opportunity must be given to the workman during course of enquiry in order to explain the charges framed against him. In the case at hand, the management terminated the workman from service without giving any opportunity in departmental enquiry nor giving prior notice to the second party workman. In view of the aforesaid discussion, it is clear that, the management has given compulsory retirement from service to the second party workman without observing due formalities of the Rules and procedure of the Corporation. Hence, it can be said that, the termination of service of the second party workman by the management by way of compulsory retirement is illegal and unjustified.

12. As it appears that, the workman was working under the first party management with effect from the 1st March 1974 and continued his work till his compulsory retirement with effect from the 30th September 2003 before his superannuation. The workman has claimed the salary and other service benefits from the date of his compulsory retirement till his superannuation. As already discussed, the termination of service of the workman by the management was not legal. Therefore the workman is entitled for back wages for the said period. Considering the above facts and circumstances of the case, I am of the opinion that, it will meet the ends of justice if it is ordered for payment of back wages to the workman.

13. Thus the reference is answered on contest against the first party management without costs. Accordingly the action of the management by way of compulsory retirement of the second party workman from the service with effect from the 30th September 2003 is illegal and unjustified.

14. In the result, I hold that, the second party workman is entitled to get the back wages as indicated above.

Dictated and corrected by me.

DEBASIS ROUT
18-11-2014
Presiding Officer
Labour Court
Jeypore.

DEBASIS ROUT
18-11-2014
Presiding Officer
Labour Court
Jeypore.

By order of the Governor
M. NAYAK
Under-Secretary to Government